

S/N: 09/724,433

Atty Dkt No. RPC 0543 PUS

### Remarks

Claims 9-30 were pending and rejected. Claims 31-35 are added by this amendment. Claims 20 and 25 are cancelled.

The Examiner has rejected claims 9-30 as anticipated by Foy (US 4,923,079) or Martelli (EP 073357). Martelli does not disclose projections extending downwardly from a base that are received in recesses in an outer surface of collapsed side walls of a below-stacked container (or vice-versa). Also, Martelli does not disclose a lateral flange depending from lateral edges of the main wall of a pair of walls. Therefore, Martelli does not anticipate any of the claims.

Claim 9 has been amended to recite that "the base is substantially between the lateral flanges on the first pair of opposed side walls," which is not shown in Foy or Martelli. This feature is shown, for example, in Figure 3 of the present application.

Claim 13 has been amended to recite that "the recessed sections of the end walls are arranged to receive the projections areas of a corresponding base stacked thereabove when cross-stacked thereon." It is not clear if there are projections on the base of Foy that would extend into recesses on the side walls, but it is clear that this could not be the case if the containers were cross-stacked. Therefore, claim 13 is not anticipated by Foy.

Claim 19 has been amended to recite that the end edges of the base are "each defined by an upstanding base wall." Foy does not disclose that the end edges of the base (to which the end walls are pivotably attached) have upstanding base walls. Therefore, claim 19 is not anticipated by Foy.

New claim 31 recites, "the upper surface of the base is disposed between the lateral flanges on the first pair of opposed side walls" when the container is in the collapsed position. As can be determined from Figure 3 of Foy, Foy does not disclose this feature. Therefore, claim 31 is not anticipated by Foy.

The Examiner has also rejected claims 9-30 for nonstatutory double-patenting over U.S. Patent Nos. 6,015,056, 6,089,827 and 6,209,742. However, the Examiner has not even provided a *prima facie* case of obviousness-type double-patenting. The Examiner is required to point out the differences between the issued and pending claims and present a *prima facie* case why those differences would be obvious in light of the prior art, including the motivation that renders those differences obvious. (MPEP 804). None of these patents claim the alternating projection areas and recessed areas on the lower surface of the base, or that recessed sections on the first pair of

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opposed side walls are arranged to receive the projections of a corresponding base stacked thereabove, as required by all of the pending claims. The Examiner only argues that the claims in these patents recite "latching means and the collapsible container having the base." These common features are well-established in the prior art and not sufficient to render the present claims obvious under double-patenting grounds.

It is noted that the Examiner appears to have withdrawn any reliance on an *In re Schneller* type of double-patenting rejection.

Reconsideration is requested. Please charge \$140 to Deposit Account No. 50-1984 (including \$54 for three additional claims total and \$86 for one additional independent claim).

If any additional fees are due, should amounts need to be credited, please charge or credit Deposit Account No. 50-1984.

Respectfully submitted,



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